Petition

81-739

Office - Supreme Court, U.S.
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ALEXANDER L. STEVAS,
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No.

THE SUPREME COURT OF THE UNITED STATES

October Term, 1981

DANIEL W. SIMPSON, Petitioner

v.

STATE OF KANSAS, Respondent

PETITION FOR WRIT OF CERTIORARI
TO REVIEW THE JUDGMENT IN A
CRIMINAL CASE RENDERED BY

The Supreme Court of Kansas

Case No. 80-52459-A

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QUESTION PRESENTED FOR REVIEW

Whether the search of an automobile based on consent meets constitutional standards where the owner consents to the search while in police custody but prior to being arrested, and where the police induce consent through the use of a fraudulent pretext while the owner is intoxicated.

TABLE OF CONTENTS

Index to Authorities ii

Opinion Below iii

Jurisdictional Statement iii

Constitutional Provision and Statute Involved iv

Statement of the Case 1

Procedural History 1

Relevant Facts 2

Reasons for Granting this Writ 9

Conclusion 18

Appendix A 21

Opinion of the Supreme Court of Kansas of July 17, 1981 21

Judgment of the Supreme Court of Kansas of July 17, 1981 . . 25

Journal Entry of the District Court of Douglas County, Kansas, of August 5, 1980 . . 25

Appendix B . . . . . .

Motion to Suppress Evidence in the District Court of Douglas County, Kansas, of June 17, 1980 29

INDEX TO AUTHORITIES

Camara v. Municipal Court, 387 U.S. 523, 87 S.Ct. 1727, 18 L.Ed.2d 930 (1967) 10

Chambers v. Maroney, 399 U.S. 42, 90 S.Ct. 1975, 26 L.Ed. 2d 419 (1970) 12

Chimel v. California, 395 U.S. 752, 89 S.Ct. 203, 23 L.Ed. 2d 685 (1969) 12

Coolidge v. New Hampshire, 403 U.S. 443, 91 S. Ct. 2022, 29 L.Ed.2d 564 (1971) 11, 13

District of Columbia v. Little, 178 F.2d 13 (D.C.Cir. 1949) (aff'd 339 U.S. 1) 17

Johnson v. United States, 333 U.S. 10, 68 S.Ct. 367, 92 L.Ed. 436 (1948) 12, 14

Mapp v. Ohio, 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed.2d 1181 (1961) 10

Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L. Ed.2d 694 (1966) 14

Schneckloth v. Bustamonte, 412 U.S. 218, 93 S.Ct. 2041, 36 L.Ed.2d 854 (1973) 13, 14, 15

United States v. Chadwick, 433 U.S. 1, 97 S.Ct. 2476, 53 L.Ed.2d 538 (1972) 10

United States v. Griffin, 530 F.2d 739 (7th Cir. 1976) 17

OPINION BELOW

The per curiam, memorandum opinion of the Supreme Court of Kansas was unreported. It appears in Appendix A hereto, infra, page 21. The judgment of the Supreme Court of Kansas appears in Appendix A hereto, infra, page 25. The Journal Entry of the District Court of Douglas County, Kansas, appears in Appendix A hereto, infra, page 25.

JURISDICTIONAL STATEMENT

The judgment of the Supreme Court of Kansas was entered on July 17, 1981. Pe-

titioner invokes the jurisdiction of this Court under 28 U.S.C. §1257(3).

CONSTITUTIONAL PROVISION AND STATUTE INVOLVED

1. The Fourth Amendment, United States Constitution, which provides:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affiarmation, and particularly describing the place to be searched, and the persons or things to be seized."

2. The statute under which petitioner was prosecuted, though nothing turns on its terms, was K.S.A. 65-4127b(a)(3), 1979 Supp., which provides as follows:

> "65-4127b. Manufacture, possession, disposition or sale of depressant, stimulant or hallucinogenic drugs; penalties.
>
> "(a) Except as authorized by the Uniform Controlled Substances Act, it shall

be unlawful for any person to manufacture, possess, have under such person's control, prescribe, administer, deliver, distribute, dispense or compound:

> "(3) any hallucinogenic drug designated in subsection (d) of K.S.A. 65-4105.[1]

"Any person who violates this subsection shall be guilty of a class A misdemeanor, except that upon conviction of a second or subsequent offense, such person shall be guilty of a class D felony."

[1]K.S.A. 65-4105(d)(11) lists marijuana the drug petitioner was convicted of having in his possession.

STATEMENT OF THE CASE

The facts necessary to place in its setting the question now raised can be briefly stated:

1. Procedural history of the case now before this Court.

On August 5, 1980, in a combined trial and hearing on petitioner's motion to suppress evidence, entitled State of Kansas v. Daniel W. Simpson, Case No. 80-223, petitioner was tried by the District Court of Douglas County, Kansas, on a complaint alleging six counts in violation of K.S.A. 65-4127b. At the conclusion of the State's testimony, the Court ruled on petitioner's motion to suppress evidence.

The Court found that the evidence supporting Counts I through V was improperly seized during an unlawful search. However, the Court also ruled that the evidence supporting Count VI had been taken during a lawful search. Accordingly, the Court sustained petitioner's motion to suppress evi-

dence as it related to Counts I through V and overruled petitioner's motion to suppress evidence as it related to Count VI.

On that basis, the Court dismissed Counts I through V and found petitioner guilty of Count VI charging violation of K.S.A. 65-4127b(a)(3).

On August 5, 1980, the District Court of Douglas County, Kansas, entered judgment and petitioner was sentenced to one year's imprisonment in the County Jail and fined $150 plus costs.

On August 6, 1980, petitioner filed a notice of appeal to the Supreme Court of Kansas. The judgment and sentence of the District Court was affirmed by the Supreme Court of Kansas, State of Kansas v. Daniel W. Simpson, Case No. 80-52459-A, unpublished memorandum opinion No. 52,459. (See Appendix A, infra, page 21)

2. Relevant facts concerning the underlying conviction for misdemeanor possession of marijuana.

At 11:48 p.m. on the night of April 1, 1980, an officer of the Lawrence, Kansas, Police Department was dispatched to the Kwik Shop, 1714 West 23rd Street, Lawrence, Kansas, in response to a request from the store's night manager that two individuals be removed from the premises. The night manager, Mr. Lance R. Norris, informed the officer, Kenneth McKenzie, that petitioner, Mr. Daniel W. Simpson, and an unknown male companion had caused a disturbance with his customers. (R. 6, 49)

Officer McKenzie confronted petitioner outside the store. Petitioner's companion, upon observing the arrival of the police, had fled from the premises. According to the police report, petitioner appeared to be in a very intoxicated state. Officer McKenzie's uncontroverted trial testimony demonstrates that at this time petitioner's speech was slurred, he had problems with balance, (R. 62) but petitioner did not

have the smell of alcohol on his breath. (R. 65, 69) These outward manifestations led Officer McKenzie to presumptively conclude that the petitioner was under the influence of an illegal drug or narcotic which could be hidden in an automobile. (R. 70)

When asked for identification, petitioner had difficulty finding and removing his driver's license from his wallet. (R. 51) After the officer returned his driver's license, petitioner asked the officer how to get out of Leawood, Kansas, a Johnson County, Kansas, community 35 to 40 miles southeast of Lawrence. Upon hearing this rather unusual question, Officer McKenzie asked the petitioner what town he was in. Petitioner replied that he was in Kansas City, Kansas, a Wyandotte County, Kansas, community that is actually 30 to 35 miles northeast of Lawrence. (R. 61-62) Based on this conversation, coupled with his

observations of petitioner's speech, balance, and breath, Officer McKenzie ordered the petitioner not to drive his car, to go next door and get some coffee, sober up, and find his friend before returning to Leavenworth, Kansas, where petitioner resides. (R. 50, 63)

Thereafter, petitioner was kept under surveillance by Officer McKenzie from a parking lot across the street. Shortly after the surveillance was initiated, Officer Greg Hudson joined Officer McKenzie. While discussing Officer McKenzie's initial confrontation with the petitioner and the nature of petitioner's intoxication, the officers observed the petitioner repeatedly get in and out of his car, and further observed the petitioner circle the outside of the store several times. It was apparent to the officers that the petitioner was looking for something. (R. 52)

Approximately 30 minutes after Officer

McKenzie began his surveillance of the petitioner, the officers were summoned to the store again. Mr. Norris had called the police station a second time stating that he wanted to lock up the store and he was concerned about the petitioner's continued presence. (R. 7-8, 21)

Upon their arrival, Officers Hudson and McKenzie confronted the petitioner, asking him why he had not sobered up and left the premises. The petitioner replied that he could not find his keys. (R. 53)

Except for a negligible improvement in his ability to walk, the petitioner's mental and physical condition had not materially changed over the course of the half-hour surveillance. (R. 64) Petitioner's intoxication was obvious to Officer Hudson, who had not engaged the petitioner prior to this encounter. The petitioner's slurred speech, poor motor

skills, and unresponsiveness to further questions from the officers verified in Officer Hudson's mind the diminished capacity of the petitioner. (R. 40-41) In fact, the petitioner repeated his desire to leave Leawood, Kansas. (R. 34) Because petitioner continued to exhibit signs of extreme intoxication, Officer McKenzie admitted at trial that, at this point in time, he still would not have allowed a man in petitioner's condition to drive a car. (R. 65)

While Officers McKenzie and Hudson were questioning and observing the petitioner, he continued to look for his car keys. Officer Hudson asked if he could search the car for the keys. The petitioner consented. Officer Hudson immediately searched the area under the driver's seat and discovered a soft, vinyl bank bag. Officer Hudson got out of the car with the bag and asked petitioner if the keys were

inside the bag. The petitioner responded, "I don't know, look." Officer Hudson then opened the bag and found, among other things, a plastic bag that appeared to contain marijuana. (R. 23-25)

The petitioner was then given Miranda warnings by Officer Hudson, although, according to Officer Hudson, the petitioner was not under arrest at this point. (R. 24, 39) The petitioner was asked if the bank bag and its contents were his. He replied, "Yes, can I go home now?" (R. 66) Officer Hudson then asked the petitioner for permission to search the trunk of the car if the officers could find the car keys. The petitioner gave Officer Hudson permission to search the trunk, saying, "Yes, if you could find the keys." (R. 54)

Officer Hudson found the keys near the back of the store approximately 10 minutes after he had discovered the bank bag. (R. 28) The officer again requested permission

to search the trunk, advising the petitioner to keep his rights in mind. (R 54-55) The petitioner again consented and the subsequent search revealed that the trunk apparently contained a sizable quantity of illegal drugs. (R. 31-32) Only after the trunk had been searched did the officers place the petitioner under arrest. (R. 33)

REASONS FOR GRANTING THIS WRIT

The trial court's ruling suppressing the evidence necessary to find petitioner guilty of Counts I through V involved the drugs found in the search of the trunk. Since the petitioner was tried in a combined trial and hearing on the motion to suppress evidence, any question as to the suppression of the trunk evidence is now moot as petitioner was acquitted on Counts I through V after jeopardy had attached. The only issue before this Court is the validity of the initial search of peti-

tioner's car which led to the discovery of a small bag apparently containing marijuana.

The Fourth Amendment to the United States Constitution protects citizens against unreasonable searches and seizures by the federal government. This Court has interpreted the due process clause of the Fourteenth Amendment to extend this protection to unreasonable searches and seizures by state authorities. Mapp v. Ohio, 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed.2d 1181 (1961). Moreover, this protection applies to the search and seizure of an automobile, United States v. Chadwick, 433 U.S. 1, 97 S.Ct. 2476, 53 L.Ed.2d 538 (1972), even if the individual is not suspected of criminal activity. Camara v. Municipal Court, 387 U.S. 523, 87 S.Ct. 1727, 18 L.Ed.2d 930 (1967).

Subject only to a few well-defined exceptions, this Court's unbroken precedents hold that searches conducted without a judi-

cial warrant are per se unreasonable. The exceptions are "jealously and carefully drawn" and there must be a clear showing by those seeking the exception that the exigencies of the situation made a warrantless search imperative. Coolidge v. New Hampshire, 403 U.S. 443, 445, 91 S.Ct. 2022, 29 L.Ed.2d 564 (1971). In this case, the only exception to the warrant requirement that applies to the initial search involves the fact that petitioner consented to the search.

The initial search cannot be justified on the basis of probable cause and exigent circumstances. The officers had no information that would give them probable cause to believe that the petitioner's car contained contraband until after the first search was concluded. During the entire search period, the petitioner was in effective police custody and did not have his car keys. Hence, there was no possibility that his car could

be removed from the store's parking lot before a warrant could be obtained. Therefore, no exigent circumstance or probable cause validates the officers' warrantless search. Chambers v. Maroney, 399 U.S. 42, 90 S.Ct. 1975, 26 L.Ed.2d 419 (1970).

Nor is it meritorious to justify the search as incidental to a lawful arrest. The petitioner was not under arrest until after the conclusion of the second search. Further, the area searched was not within his immediate control. Hence, this exception is similarly inapplicable. Johnson v. United States, 333 U.S. 10, 68 S.Ct. 367, 92 L.Ed.2d 436 (1948), Chimel v. California, 395 U.S. 752, 89 S.Ct. 203, 23 L.Ed.2d 685 (1969). The "plain view" doctrine, which allows police to seize incriminating evidence that is in "plain view," if and only if the initial intrusion is lawful, has no application in the case at bar. The contents of the closed

bag under the driver's seat were obviously not in plain view. Coolidge v. New Hampshire, supra.

The only basis on which the initial search of petitioner's car can be justified is his consent. This was recognized by both the prosecution and defense counsel when they argued that the sole issue as to the initial search was the validity of the petitioner's consent. (R. 71-78)

The proper legal standard for determining the validity of a purported consent measures the "voluntariness" of the consent. Thus, whether consent to search is in fact voluntary, is a question of fact to be determined from the totality of the surrounding circumstances. Schneckloth v. Bustamonte, 412 U.S. 218, 93 S.Ct. 2041, 36 L.Ed.2d 854 (1973).

In determining the voluntary nature of a consent, a variety of factors warrant judicial attention. Here, the evidence at

trial conclusively established that the consent was obtained while petitioner was in custody, an inherently coercive situation that renders a consent involuntary. Johnson v. United States, supra; Schneckloth, supra; Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

The consent was obtained through the use of a fraudulent pretext. The officers admitted at trial that they would not have let petitioner drive his car. (R. 50, 63, 65) Clearly, their motive in asking him if they could search the car for the keys was not to allow petitioner to leave after the keys were found. Since the officers were not prepared to let petitioner leave once the keys were found, some unknown motive must have prompted their request to aid petitioner in finding his keys.

The petitioner was never informed of his right to refuse consent. While such knowledge is not a prerequisite to a valid

consent, it is one factor to be taken account of in determining the voluntariness of petitioner's consent. Schneckloth, supra. However, the necessity of being informed of one's constitutional right to refuse consent becomes critical where, as here, the officers obtain consent by disguising their motives.

The petitioner was obviously in a "vulnerable subjective state" due to his severely impaired mental capacity which resulted from his extreme intoxication. In Schneckloth, supra, the Court noted that "account must be taken of subtly coercive police questions, as well as the possibly vulnerable subjective state of the person who consents." 412 U.S. at 229. Petitioner had been confronted and interrogated by the police twice; he had been abandoned by his companion; he did not have possession of his car keys, and, as the trial court specifically concluded, he did not even know

what town he was in. (R. 79) A more vulnerable subjective state would be difficult to imagine.

Clearly, in light of all the surrounding circumstances, the petitioner's purported consent to the initial search cannot be reasonably seen as the product of a rational intellect and a free will. However, the trial court failed to determine the validity of the petitioner's initial consent when it ruled that the officers had not conducted the initial search totally for improper motives. (R. 78-79) The court's legal justification for its ruling is erroneous. There is no recognized exception to the warrant requirement, under the facts of this case, which would validate even a good faith search of an individual's car without a valid consent.

Proper motivation or intention has no recognized legal significance which is sufficient, standing alone, to justify a war-

rantless search. District of Columbia v. Little, 178 F.2d 13 (D.C. Cir. 1949) (aff'd 339 U.S. 1). The motive and intents of the police officers in conducting the search, proper or improper, are important only to the extent that they bear on the validity of the consent. United States v. Griffin, 530 F.2d 739 (7th Cir. 1976). The officers' motives bear on the validity of the consent in the case at bar by reducing to a nullity petitioner's constitutional right to refuse consent.

The only motive apparent to the petitioner to explain the actions of the police suggested that the police were there to help him find his keys so he could leave. The police did nothing to alter this perception. In fact, they cultivated this perception when they knew it to be false. Because the police did nothing to dispel a false image that they intentionally created, petitioner was precluded from making a knowing, intel-

ligent, and voluntary consent.

While the appearance of doing what was necessary so that petitioner could drive again disguised whatever unknown intent the officers did possess, their actual intent ultimately becomes irrelevant. The simple truth remains that they did not reveal whatever their true motive was; they allowed petitioner to labor under the false assumption that they were going to let him leave once the keys were found; and, while under the influence of this false assumption, they induced the petitioner to consent to the search.

CONCLUSION

The trial court was required in the instant case to make a finding that the petitioner gave a knowing, intelligent, and voluntary consent to the initial search of his automobile in order for that search to be held constitutionally permissible. The

trial court failed to make such a determination, basing its ruling that the search was reasonable on an improper ground, i.e., the motivation of the searching officer. This error is particularly prejudicial in view of the court's ultimate conclusion that the petitioner was incapable of giving a valid consent within a few short minutes after the initial search.

The court's correct conclusion that the petitioner was incapable of giving a valid consent to the second search leads, a fortiori, to the inescapable conclusion that the petitioner was incapable of giving a valid consent to the initial search. Any attempted distinction between the two searches is simply untenable. The trial court, therefore, committed reversible error when it refused to suppress the evidence obtained in the initial search of petitioner's automobile. This petition for a writ of certiorari should, therefore, be granted.

Respectfully submitted this 14th day of October, 1981.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that he mailed 40 copies of the foregoing Petition for Writ of Certiorari to Review the Judgment in a Criminal Case Rendered by the Supreme Court of Kansas, Case No. 80-52459-A to The Honorable Justice Thurgood Marshall, c/o Clerk of the Supreme Court of the United States, 1 First Street, N.E., Washington, D.C. 20543, and 5 copies to Michael J. Malone, Douglas County District Attorney, Judicial and Law Enforcement Center, Lawrence, Kansas 66044, by depositing said copies in the United States mail, postage prepaid, on the 14th day of October, 1981.

Kermit M. Beal

APPENDIX A

"NOT DESIGNATED FOR PUBLICATION

No. 52,459

STATE OF KANSAS
Appellee,

v.

DANIEL W. SIMPSON,
Appellant.

MEMORANDUM OPINION

"Appeal from Douglas district court; JOHN MIKE ELWELL, associate judge. opinion filed July 17, 1981. Conviction affirmed; State's appeal dismissed.

"John R. Hooge, of Allen & Cooley, of Lawrence, argued the cause, and Jerry L. Donnelly, of Lawrence, was on the brief for the appellant.

"Harry E. Warren, assistant district attorney, argued the cause, and Robert T. Stephan, attorney general, and Michael J. Malone, district attorney, were on the brief for the appellee.

"Per Curiam: Daniel Simpson appeals

his conviction of one count of possession of marijuana, K.S.A. 65-4127b, upon a bench trial in Douglas district court. The principal issue is the validity of defendant's consent to a search. Police officers were called to a convenience store in Lawrence about midnight on April 1, 1980. Simpson, obviously somewhat intoxicated, was reported to have caused a minor disturbance. The officers told Simpson to get some coffee at a nearby cafe, sober up, and go home. About 30 minutes later he was still there; he seemed to be looking for something in and around his car. Simpson told the officers that he could not find his keys. One officer volunteered to help, and asked if he could look in the car for the keys; defendant immediately consented. The officer found a tan bank bag beneath the front seat; he said "I asked him [Simpson] if the keys could be in there, and he said he didn't know, go ahead and look." The bag contained

a pair of scissors and marijuana. Defendant later consented to a search of the trunk, where other drugs were found.

"Defendant filed a motion to suppress all evidence seized from inside the vehicle. Counsel and the court agreed that the court would rule upon the motion after hearing the State's evidence. In this posture, the case went to trial. At the close of the State's evidence, the trial judge denied the motion as to the marijuana seized during the hunt for the keys, but he sustained the motion as to the large quantity of drugs found in the trunk.

"We have carefully reviewed the trial judge's ruling. Although he spoke at length about the officers' motives, it is obvious that he was aware that the principal issue, where consent is challenged, is whether the consent was voluntary. Schneckloth v. Bustamonte, 412 U.S. 218, 36 L.Ed.2d 854, 93 S.Ct. 2041 (1973). Im-

plicit in his ruling is the finding that the defendant voluntarily and knowingly consented to the initial search for his car keys, which search led to the discovery of the marijuana. The evidence supports such a finding.

"That the court found the defendant to be incapable at a later time of voluntarily consenting to a search of the trunk is immaterial.

"The State appeals upon a question reserved pursuant to K.S.A. 1980 Supp. 22-3602(b)(3), and attempts to challenge the trial court's finding that the defendant did not knowingly and voluntarily consent to the search of the trunk. Had the ruling suppressing the evidence been made before trial, the State could have taken an interlocutory appeal. K.S.A. 1980 Supp. 22-3063. Any question as to the suppression of evidence is now moot, since trial has been held and jeopardy has attached;

and we see no issue of statewide interest or vital to the uniform administration of law.

"The judgment of conviction is affirmed; the State's appeal is dismissed.

"Not designated for publication."

"IN THE SPECIALIZED DIVISION OF
THE DISTRICT COURT OF DOUGLAS
COUNTY, KANSAS

STATE OF KANSAS, Plaintiff

-vs- CASE NO. CR 80-223

DANIEL W. SIMPSON, Defendant

JOURNAL ENTRY

"Now on this 24th day of April, 1980, the defendant appears by his attorney, Mr. Jerry Donnelly, for the purpose of arraignment. Defendant waives arraignment and trial is set for the 22nd day of May, 1980 at 2:30 P.M.

"Now on this 15th day of May, 1980 the case is continued by the defendant to the 19th day of June, 1980 at 10:00 A.M.

"Now on this 24th day of June, 1980 the case is continued by the defendant to the 17th day of July, 1980 at 2:00 P.M.

"Now on this 3rd day of July, 1980 the case is continued by agreement to the 5th day of August, 1980 at 3:00 P.M.

"Now on this 5th day of August, 1980 the defendant appears before the court in person and with his attorney, Mr. Jerry Donnelly. The state appears by Assistant District Attorney, Mr. Harry Warren. The state thereupon presents its evidence and moves to introduce its exhibits, at which time the defendant moves to su[p]press all exhibits based upon the argument that it was an illegal search and seizure. The court finds that all items seized pursuant to a search of the trunk should be su[p]-pressed and that items found within the passenger part of the vehicle will be re-ceived and are not the subject of an il-legal search. Whereupon the state rests.

The defendant presents no evidence.

"Closing arguments are presented by the state and defendant at which time the court finds the defendant guilty of Count VI of the complaint, the charge being Possession of Marijuana. The remaining charges are dismissed.

"The court advises the defendant that normally, under the circumstances, a presentence report would be requested; however, counsel and the defendant request the court to go ahead with sentencing immediately as an appeal will be taken. Prior to sentencing the court is advised that the defendant has the following criminal record:

> "Conviction of Possession of Marijuana (Misdemeanor.
>
> "Conviction in 1974 in Douglas County of Grand Larceny (Felony).

"Additionally, the court is advised that at the time of the arrest a quantity

of assorted drugs were found in the trunk of the defendant's vehicle, which evidence has been su[p]pressed. Nevertheless, it shows the following quantities and types of drugs:

> "1200 White tablets - Lemmon 714
>
> "149 Mandrax white table[t]s 69017
>
> "33 Black capsules 18-789 (tall orange container
>
> "71 Orange capsules - 21 - tablet 555-47 (fat orange container)
>
> "90 valium - 10 tablets (short orange container)
>
> "2 L.S.D. Papers
>
> "1 2"xl" Hash dark square (Plastic bag)
>
> "2 light brown chunks - Hash
>
> "9 Bags Marijuana

"The defendant and counsel are given an opportunity to speak in regard to sentencing, following which the court sentences

the defendant to serve one year in the County Jail, to pay a fine of $150.00 plus costs of this action.

"The court is advised tha[t] an appeal will be taken, at which time the court sets an appeal bond in the sum of $1500.00. That bond having been made, the defendant is released pending the appeal.

(SEAL) /s/ John Mike Elwell
JOHN MIKE ELWELL
ASSOCIATE DISTRICT JUDGE"

"IN THE DISTRICT COURT OF DOUGLAS COUNTY, KANSAS

State of Kansas, Plaintiff

vs. No. CR80-223

Daniel W. Simpson, Defendant

MOTION TO SUPPRESS EVIDENCE

"Comes now the defendant, Daniel W. Simpson, by and through his attorney, Jerry L. Donnelly, and moves the Court to suppress as evidence any and all evidence gained by law enforcement agents by means of an unlawful search of a certain 1970 Buick 4-Door

automobile, which unlawful search and seizure were conducted on or about April 1, 1980. In support of this motion, defendant states and alleges:

"1. The alleged contraband seized from the aforementioned motor vehicle was not in "plain view" of the arresting officers, and a search was conducted to discover the same.

"2. The said search was made without warrant and without authority. Any alleged consent to search was invalid for the reasons stated in the supporting brief.

"3. The aforesaid search and seizure of alleged contraband were illegal because there was no probable cause for the search and seizure.

"4. The search, seizure, and arrest were illegal because there was no authority to arrest, and said search and seizure were, therefore, not incidental to a lawful and valid arrest.

"5. The search was unreasonable.

"6. The grounds heretofore enumerated make such search violative of Amendment 4 of the United States Constitution and compelled the defendant to give evidence against himself in violation of the self-incrimination clause of Amendment 5 of the United States Constitution.

"WHEREFORE, counsel respectfully requests that an order be entered suppressing the evidence wrongfully seized herein and that the same be ordered excluded as evidence against the defendant, Daniel W. Simpson, and that any conversations or statements made by said defendant in connection with said arrest be similarly ordered suppressed.

Respectfully submitted,

/s/ Jerry L. Donnelly
Jerry L. Donnelly
1035 Vermont Street
P. O. Box 1330
Lawrence, Kansas 66044
913-841-2294"

"NOTICE OF HEARING

TO: Harry Warren
Assistant District Attorney
Douglas County, Kansas

"Please take notice that the foregoing motion to suppress evidence will be brought on for hearing before the Douglas County District Court, Specialized Division, the Honorable John Michael Elwell presiding, on the 19th day of June, 1980, at 10:00 o'clock a.m., or as soon thereafter as counsel can be heard.

"Dated this 17th day of June, 1980.

/s/ Jerry L. Donnelly
Jerry L. Donnelly"

"CERTIFICATE OF SERVICE

"The undersigned hereby certifies that he delivered a true copy of the foregoing Motion to Suppress Evidence to Harry Warren, Asst. District Attorney, Judicial and Law Enforcement Center, Lawrence, Kansas 66044 on the 17th day of June, 1980.

/s/ Jerry L. Donnelly
Jerry L. Donnelly"